STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner **File No. 86112-001-SF**

v

Magellan Behavioral of Michigan
Respondent
_____/

Issued and entered
this 8th day of February 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 11, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under Public Act No. 495 of 2006, MCL 550.1951 *et seq*. The Commissioner reviewed the request and accepted it on January 7, 2008.

Section 2(2) of Act 495, MCL 550.1952(2), requires the Commissioner to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Magellan Behavioral of Michigan (Magellan) of the external review and requested the information used in making its adverse determination. Magellan provided the information on January 2 and 7, 2008.

The issue here can be decided by applying the terms of the Petitioner's mental health care coverage. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

The Petitioner has mental health care benefits through her employment with the State of Michigan, a self-funded plan that is administered by Magellan. The Petitioner and four eligible dependents received mental health treatment from XXXXX, licensed professional counselor, from September 2006 through the end of 2007. Ms. XXXXX is not a provider in Magellan's network.

Claims for the treatment were eventually submitted to Magellan after they had been erroneously submitted to Blue Cross and Blue Shield of Michigan. Magellan then paid the claims for covered services at the out-of-network benefit level, which is 50% of the usual and customary rate.

The Petitioner appealed Magellan's decision to pay at the out-of-network rate. Magellan reviewed the claims but upheld its determination and sent a final adverse determination dated December 20, 2007, to the Petitioner.

III
ISSUE

Is Magellan required to pay more for the Petitioner's mental health treatments from September 2006 through 2007?

IV
ANALYSIS

Petitioner's Argument

The Petitioner has XXXXX adopted daughters, two of whom have special needs, and sought mental health services from Ms. XXXXX when another provider she was referred to declined to take her case due to lack of expertise.

The Petitioner says Ms. XXXXX contacted Magellan to determine coverage before treatment began and was told by Magellan that her rate of $90.00 was reasonable. The Petitioner says Magellan agreed to Ms. XXXXX rate and did not explain that coverage would be reduced because

Ms. XXXXX is an out-of-network provider. The Petitioner believes coverage based on usual and customary charges is inequitable and Magellan should pay more for the services.

Magellan's Argument

The Petitioner's mental health coverage is based on the network status of the provider. Magellan says covered services from an out-of-network provider are paid at 50% of the usual and customary rate. The Petitioner's benefits are outlined in the State of Michigan's *Mental Health and Substance Abuse Information Guide*, which states:

> When you receive care from a Magellan Behavioral Health referred provider, you receive maximum coverage for your care and your out-of-pocket costs will be lower than if you obtain services from an out-of-network provider.

Magellan says that when it eventually got the complete and corrected claims for Ms. XXXXX services, it paid the claims for the covered services[1] according to the terms of the plan, i.e., at 50% of the usual and customary charge. Magellan disputes the Petitioner's contention that it had approved payment of the full $90.00 rate charged by Ms. XXXXX.

Magellan further said in the final adverse determination that if the Petitioner chose to send in records, including a copy of the initial assessment and quarterly progress notes for each family member treated, it would review the medical necessity criteria to determine if Ms. XXXXX expertise merited coverage at the network level, and Magellan would advocate with the State of Michigan for payment at a higher rate. If the Petitioner chose not to send records, however, or if the clinical information did not support the Petitioner's and provider's statements, Magellan said its original decision would stand.

Magellan asserts that under the circumstances the Petitioner's claims have been paid appropriately.

Commissioner's Review

1 Some services (e.g., a court appearance and multiple therapy visits on the same day) were denied as not covered under the terms of the Petitioner's mental health plan.

The Petitioner is understandably unhappy that she has incurred higher out-of-pocket costs for the mental health care her family received from a non-network provider. At the heart of her argument is the assertion that Ms. XXXXX received approval from Magellan to treat the Petitioner and her family and be reimbursed at the network rate. Magellan disputes this, saying it has no record of any approval and that Ms. XXXXX provided no proof that approval had been given.[2] Magellan also disputes the Petitioner's contention that Ms. XXXXX repeatedly submitted claims, saying it first received notice of the claims in October 2007.

However, resolution of the dispute as described by the Petitioner cannot be the basis of a decision under the Patient's Right to Independent Review Act (PRIRA) because PRIRA lacks the hearing procedures necessary for the Commissioner to make findings of fact based on oral statements. Moreover, the Commissioner lacks the authority (which the circuit court possesses) to order any type of equitable relief, based on doctrines such as estoppel or waiver, that the Petitioner seeks. In this external review the Commissioner is bound by the terms and conditions of the Petitioner's coverage unless they conflict with state law.

While the Petitioner's plan covers out-of-network services, they are subject to a higher coinsurance. The *Mental Health and Substance Abuse Information Guide* (page 18 of the Petitioner's certificate) explains that out-of-network outpatient benefits are only paid at 50% of network rates. The guide further says (pages 15-16):

> **Out-of-Network Benefits**
>
> If you choose to be treated by a provider not within Magellan's network, please be aware you will be financially responsible for payment of all or a portion of that provider's fee. * * *
>
> Out-of-network providers are not required to process claims on your behalf – in such cases you must submit the claim yourself. * * *
>
> Services obtained without Magellan's precertification will not be eligible to receive the maximum benefit covered by the plan and may

2 Notes from the managerial level conference on December 18, 2007, indicate that Ms. XXXXX may have interpreted Magellan's September 2006 verification that her rate was reasonable to mean that Magellan would pay the full amount.

not be covered at all.

It is undisputed that Ms. XXXXX is an out-of-network provider. It is clear that Ms. XXXXX rate of $90.00 was accepted by Magellan as usual and customary because it paid 50% ($45.00) for each covered visit. The four pages of claims history produced by Magellan show that Magellan accepted virtually all the Petitioner's claims (beginning in September 2006 through the end of 2007) as covered services and paid them at the out-of-network rate of $45.00.

It is unfortunate that the Petitioner did not anticipate or understand the extent of her responsibility for charges from an out-of-network provider. However, from all the information provided, the Commissioner concludes that Magellan paid for the Petitioner's mental health care from an out-of-network provider in accord with the terms and conditions of her mental health care coverage and is not required to pay more. The Petitioner remains responsible for any difference between Ms. XXXXX charge and Magellan's payments.

V
ORDER

The Commissioner upholds Magellan Behavioral of Michigan, Inc.'s adverse determination of December 20, 2007. Magellan is not required to pay more for the Petitioner's services from September 2006 through 2007.

This is a final decision of an administrative agency. A person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. See MCL 550.1915, made applicable by MCL 550.1952(2).

A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.